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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,331	03/27/2002	Dana Paul Gruenbacher	8166M	1461

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,331	Applicant(s) GRUENBACHER ET AL.	
	Examiner Kathleen J. Prunner	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2005.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-20, 22, 23 and 25-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-20, 22, 23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on January 20, 2005 for a Request for Continued Examination (RCE) under 37 CFR 1.114 (a)(3) based on parent Application No. 10/089,331 is acceptable and an RCE has been established. An action on the RCE follows.

Response to Amendment

2. The amendment filed January 20, 2005 is apparently a request to reconsider the rejection of the claims since no amendments to the claims, as noted by the Introductory Remarks at the top of page 2, are made in accordance with 37 CFR 1.121(c).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-6, 10-20, 22, 23 and 25-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 25 call for "a resealable channel". The originally filed specification describes "The distribution channel 44 may be of a material and configuration such that it is self-sealing and collapses shut to restrict, if not preclude, fluid flow except when the chamber is substantially pressurized." (note the sentence beginning on line 18 of page 14) and "In one embodiment, for example, the channel width is preferably in the range from about 0.125 inches to about 0.5 inches wide, more preferably about 0.25 inches, to allow 'resealing' of the

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channel while not requiring excessive force on the pouch to pressurize the channel” (note the sentence beginning on line 31 of page 14). However, the originally filed disclosure fails to describe or support what materials and configurations are necessary to constitute such “a resealable channel”. Hence, claims 1-6, 10-20, 22, 23 and 25-28 are directed to new matter.

5. Claims 1-6, 10-20, 23, 25-28 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 25 and 30 call for either a resealable channel or a distribution channel having “a predetermined location”. However, the originally filed disclosure fails to describe or support “a predetermined location” for the resealable channel or distribution channel or even describe or support what constitutes such “a predetermined location”. Hence, claims 1-6, 10-20, 23, 25-28 and 30 are directed to new matter.

6. Claims 1-6, 10-20, 22, 23 and 25-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1 and 25 call for “a first side having a first internal surface and a first external surface” and “a second side having a second internal surface and a second external surface”. However, the originally filed specification describes and supports “One non-limiting, representative example of an applicator of the present invention includes a semi-enclosed applicator such as the disposable mitt 10” (note the sentence beginning on line 4 on page 8), “The mitt 10 has a front outer surface 31, a front inner surface 32, a back outer surface 33, and a back inner surface 34. The front and back inner surfaces define a hollow interior 29 into which a hand may be inserted through an opening in the cuff portion 21. The mitt 10 includes a front panel 24, which defines the front outer surface 31, and a back panel 26, which defines the back

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outer surface 33.” (note the sentence beginning on line 16 of page 8). Hence the originally filed specification fails to describe what constitutes the claimed first and second sides, first and second internal surfaces, and first and second external surfaces.

Claim 2 calls for “a first substantially fluid-impervious barrier layer is located between said reservoir and said second internal surface”. However, the originally filed specification describes and supports “In order to protect the hand of the user from contact with the product during the dispensing and/or dispersing operation, the applicators of the present invention can include a barrier layer 25, the interior of which defines the front inner surface 32 that faces the wearer's hand during use.” (note the sentence beginning on line 30 of page 22) and “To protect the wearer's hand from contact with liquids absorbed by the back panel 26, it may be desirable for some applications to include an optional additional fluid impervious barrier layer 27, the interior of which defines the back inner surface 34 that faces the wearer's hand during use.” (note the sentence beginning on line 1 of page 28). Hence, the originally filed specification fails to describe what constitutes the claimed “first substantially fluid-impervious barrier layer” that “is located between said reservoir and said second internal surface”.

Claim 13 calls for “a second substantially fluid-impervious barrier layer disposed between said first barrier layer and said second internal surface”. However, the originally filed disclosure merely supports “To protect the wearer's hand from contact with liquids absorbed by the back panel 26, it may be desirable for some applications to include an optional additional fluid impervious barrier layer 27, the interior of which defines the back inner surface 34 that faces the wearer's hand during use.” (note the sentence beginning on line 1 of page 28). Hence, the originally filed specification fails to describe what constitutes the claimed “second substantially fluid-impervious barrier layer” that “is disposed between said first barrier layer and said second internal surface”.

Claims 25 and 30 call for “a flow restriction layer disposed between said reservoir and said first external surface”. However, the originally filed disclosure fails to support or describe such a layer and its disposition or even describe or support what constitutes such a layer.

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Claim 28 calls for “a substantially fluid-impervious barrier layer disposed between said reservoir and said second internal surface”. Like claim 2 above, the originally filed specification describes and supports “In order to protect the hand of the user from contact with the product during the dispensing and/or dispersing operation, the applicators of the present invention can include a barrier layer 25, the interior of which defines the front inner surface 32 that faces the wearer's hand during use.” (note the sentence beginning on line 30 of page 22) and “To protect the wearer's hand from contact with liquids absorbed by the back panel 26, it may be desirable for some applications to include an optional additional fluid impervious barrier layer 27, the interior of which defines the back inner surface 34 that faces the wearer's hand during use.” (note the sentence beginning on line 1 of page 28). Hence, the originally filed specification fails to describe what constitutes the claimed “substantially fluid-impervious barrier layer” that “is disposed between said reservoir and said second internal surface”.

Claims 29 and 30 call for “a first substrate”. However, the originally filed disclosure fails to describe or support “a first substrate” or even describe or support what constitutes such “a first substrate”.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ketner in view of Lane, Jr., et al. Ketner discloses an applicator for distributing a substance onto a target surface (note lines 27-28 in col. 1) having the claimed features including a first substrate constituted by pad or sheet 26*b* (note Figs. 5 and 6) and a flexible (note lines 59-62 in col. 2) thin film dosing reservoir constituted by container C3 (note lines 20-23 in col. 1) having at least one frangible

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seal (note lines 50-51 in col. 2), the reservoir C3 containing a product (note lines 22-24 in col. 1), the reservoir C3 being disposed adjacent to the first substrate 26*b* (note Fig. 6), the product being sequentially releasable (note lines 69-74 in col. 2) through the seal (note lines 43-46 in col. 1) to the first substrate 26*b* via multiple applications (note lines 69-74 in col. 2) of pressure to the reservoir C3 (note lines 25-27 in col. 1). Ketner further discloses that the container can take the form of a pouch (note the second sentence of the Abstract). Although Ketner fails to disclose the use of other reservoirs/pouches/containers that are an alternative to the container C3, attention is directed to Lane, Jr., et al. who disclose another thin film pouch 10 for dispensing a liquid product having a pressure rupturable frangible seal (note lines 5-10 in col. 1) and a dispensing cavity 28 provided with a distribution channel or conduit 34 (note Fig. 1) disposed proximate the seal (along top edge 24) (note Fig. 1 and lines 39-42 in col. 4) and having at least one opening 36 to the exterior of the pouch for dispensing the product from the pouch (note lines 45-47 in col. 2) in order to provide a pouch that can be easily opened, can be opened with a single hand (note lines 54-59 in col. 1) to dispense the product from the pouch, and allows for controlled dispensing of the product (note lines 35-44 in col. 7) as a functional equivalent. In view of the teaching of Lane, Jr., et al., it would have been obvious to one of ordinary skill in the liquid dispensing art, at the time the invention was made, to employ the thin film channeling reservoir of Lane, Jr., et al. for the container/reservoir of Ketner wherein so doing would constitute substitution of functional equivalents that would work equally well in the Ketner device.

9. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ketner in view of Lane, Jr., et al., as applied to claim 29 above, and further in view of Gerber et al. Ketner further discloses using a flow restriction layer or nonporous sheet 40*b* that covers one side of the first substrate constituted by pad or sheet 26*b* (note Fig. 6) in order to prevent penetration of the fluid through that side of the pad or sheet 26*b* (note lines 8-11 in col. 3). Although Ketner disposes the flow restriction layer on the outer surface of the substrate or pad or sheet 26*b* (note Fig. 6) rather than between the reservoir C3 and the substrate or pad or sheet 26*b*, attention is directed to Gerber et al. who disclose another pad provided with a reservoir constituted by a container or

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capsule 1 containing a product 1a (note lines 24-26 and 29-32 in the second column on page 1) to be released to the first substrate or pad 3 (constituted by the lower portion of pad 3) by the use of applications of pressure to the reservoir 1 (note from line 45 in the first column on page 2 to line 2 in the second column on page 2) and provided with a flow restriction layer or strip or piece of material 4 interposed behind the reservoir 1 (note lines 9-13 in the first column on page 2) and disposed between the reservoir 1 and the first substrate or pad 3 constituted by the lower portion of pad 3 so as to limit the egress of the product to the face of the pad and prevent excretions absorbed by the opposite face from entirely permeating the entire pad (note lines 13-17 in the first column on page 2). It would have been obvious to one of ordinary skill in the dispensing art, at the time the invention was made, to position the flow restriction layer of Ketner disposed between the reservoir and the first substrate or pad in view of the teachings of Gerber et al. in order to limit the egress of the product to the face of the pad and prevent excretions absorbed by the opposite face from entirely permeating the entire pad.

Response to Arguments

10. Applicant's arguments filed January 20, 2005 have been fully considered but they are not deemed persuasive.

11. Applicants' arguments with respect to the rejection of claims 1-6, 10-20, 23, 25-28 and 30 under the first paragraph of 35 U.S.C. 112 have been carefully considered. However, since the originally filed disclosure, including the portion cited in the amendment, fails to describe "a predetermined location", it cannot be determined what is intended thereby.

12. Applicants' arguments with respect to the rejection of claims 13 and 14 under the first paragraph of 35 U.S.C. 112 have been carefully considered. However, applicants' Fig. 2 clearly shows that the barrier layer 27 is positioned between the back panel 26 and the back inner surface 34 when formed by the friction enhancing element 28 (note lines 11-16 on page 28). When no friction enhancing element 28 is used, the interior of barrier layer 27 defines the back inner surface 34 (note lines 1-4 on page 28).

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Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Volckening is cited to show a flexible reservoir for dispensing liquids having a self sealing or resealable distribution channel. Kaplan et al. is cited to show a flexible reservoir for dispensing liquids having a distribution channel.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Kathleen J. Prunner, whose telephone number is 571-272-4894.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kathleen J. Prunner

May 3, 2005


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